FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 652/2006

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATED : February 28, 2007.

Heard the learned counsel for the parties.

The appellant is the original defendant no. 3. A suit was filed by the respondent no.1/ plaintiff against one Janabai, her daughter Shantabai and the appellant, for a declaration that the sale deed executed by Janabai in favour of the defendant no. 3/appellant was void and not binding on her.

It is not in dispute that the property was originally owned by one Ramji. The plaintiff is the daughter of the first wife of Ramji. The defendant no.1 Janabai is the second wife of Ramji and the defendant no.2-Shantabai is the daughter of Ramji from Janabai. According to the plaintiff, though the plaintiff had half share in the suit property, the defendant no.1- Janabai sold the suit property in favour of the defendant no.3 on 31/3/1997. According to the plaintiff, the sale deed executed on 31/3/1997 was void as the plaintiff was the co-owner

in the suit property and, therefore, the sale deed was not binding on her.

The defendants filed their written statement and it was pleaded by the defendant no.3 that the plaintiff and the defendant no.2 had relinquished their shares in the suit property in favour of Janabai. It was further pleaded by the defendant no.3 that Janabai had sold the property to him for legal necessity and, therefore, the sale deed dated 31/3/1999 cannot be declared as void or not binding on the plaintiff.

The trial Court dismissed the suit filed by the plaintiff on the ground that the defendant no.1-Janabai had sold the suit property to the defendant no.3 for legal necessity. The Court further held that the plaintiff and the defendant no.2 have not relinquished their shares in the suit property in favour of the defendant no.1. The Court further held that the plaintiff did not prove that she had ½ share in the suit property.

The appellate Court reversed the findings recorded by the trial Court and on appreciation of evidence tendered by the parties on record held that the defendant no.1 had not sold the property to the defendant no.3, for legal necessity. The appellate Court held that Ramji died prior to coming into force of the Hindu Succession Act, 1956 and the plaintiff as well as the defendant nos. 1 and 2 had

1/3rd share each in the suit property. The appellate Court consequently held that the plaintiff was entitled to 1/3rd share in the suit property and the defendant no.1 had no right to dispose of the entire suit property in favour of the defendant no.3. The appellate Court, therefore, declared that the plaintiff is the owner of the suit property to the extent of 1/3rd share and, therefore, was entitled to get her share by appointing a Court Commissioner. The appellate Court held that the plaintiff was also entitled for an enquiry under Order XX Rules 12 of C.P.C. The Court lastly held that the sale deed dated 31/3/1997 was void and not binding on the plaintiff to the extent of her 1/3rd share.

The findings recorded by the appellate Court are based on the evidence and on the settled position of law and, therefore, call for no interference in this second appeal. Since no substantial question of law arises for consideration in this second appeal, second appeal is dismissed with no order as to costs.

JUDGE

RMP